REMARKS

The Applicant has filed this Amendment pursuant to 37 C.F.R. § 1.116 in reply to the outstanding Final Rejection dated August 18, 2003, and the Applicant believes the Amendment to be fully responsive to the Final Rejection for the reasons set forth herein below.

In the Final Rejection, the Examiner subjected the above-identified application to an election/restriction requirement and has indicated constructive election of original claims by virtue of the first Official Action on the merits for the original claims, as particularly set forth in the Final Rejection. The Examiner has further maintained the rejection of Claims 2, 3, 5, 8 and 10 pursuant to 35 U.S.C. § 102(e), as allegedly anticipated by Tiedemann, Jr., *et al.* (U.S. Patent No. 5,914,950) (hereinafter "Tiedemann").

At the outset and before addressing the issues raised in the Final Rejection, the Applicant has amended Claims 2, 3, 5, 8 and 10 to recite that maximum transmission rate for each mobile station is determined by taking account of radio wave propagation condition under which each said mobile station is presently situated, a data size associated with each said transmission demand, and a transmission error rate determined via a cyclic redundancy check (CRC) for each said mobile station, and determining a priority order of each said mobile station at said base station based on the radio wave propagation condition, the data size and the transmission error rate of each said mobile station, as particularly recited in the foregoing claims 2, 3, 5, 8 and 10. Support for the foregoing amendments is found in the specification on page 23, line 6 – page 26, line 21 in view of Fig. 4 (steps 402, 410-414). In addition, the Applicant has made minor clarifying amendments to Claims 11-14. The Applicant respectfully submits

that the foregoing amendments are necessary to more clearly distinguish the inventive features that were already recited in the claims. The Applicant respectfully submits that no new subject matter has been added via the amendments to the claims.

Regarding the restriction requirement, the Applicant respectfully requests the Examiner to reconsider the restriction requirement, constructively electing Group I (i.e., Claims 2, 3, 5, 8 and 10) and withdrawing Group II (i.e., Claims 11-14) from consideration. More specifically, the Applicant respectfully submits that the inventions in Groups I and II, alleged by the Examiner to be related as combination/sub-combination, should be considered one invention because the mobile stations requesting transmission of packet data (via transfer requests) require the maximum transmission rates established by the base station for the transmission of the packet data in the multi-access communication system. Likewise, the base station requires the transfer requests from the mobile stations to establish the maximum transmission rates for the requesting mobile stations in the multi-access communication system. Consequently, the Applicant respectfully requests the Examiner to withdraw the foregoing restriction requirement.

In traversing the rejections of Claims 2, 3, 5 and 8 and 10 pursuant to 35 U.S.C. § 102(e), the Applicant respectfully submits the primary prior art reference to Tiedemann is defective in that it fails to disclose that the determination of a maximum transmission rate for each of a plurality of mobile stations is achieved by taking account of a radio wave propagation, data size and transmission error rate determined via cyclic redundancy check (CRC), and determining priority order for each mobile station based on the radio wave propagation, the data size and the transmission error rate, as particularly claimed in the foregoing claims. As described on pages 23-26, in determining the maximum transmission rate, the system (and method) of present

invention considers the data size of the request from each mobile station, e.g., 400k for mobile station A, 300k for mobile station B and 200k for mobile station C (See present specification page 25, lines 2-6. The system further considers reception quality (i.e., transmission error rate) from each mobile station determined via CRC, i.e., communication channel or reception channel (See present specification page 25, lines 15-22; page 23, lines 20-25). Lastly, the system considers the rf status (i.e., signal-noise-ratio – SIR) for each mobile station (See present specification page 25, line 23 – page 26, line 7). Lastly, the system considers priority according to the foregoing radio wave propagation, data size and transmission error rate in assigning maximum transmission rate to each of the plurality of mobile stations.

Tiedemann is directed to a method and apparatus for reverse link rate scheduling. At Col. 8, line 66 – Col. 9, line 60 with respect to Fig. 3, Tiedemann discloses that the rate on the reverse link may be scheduled by the channel scheduler 12 by taking into account pertinent information, which may include: scheduled and unscheduled tasks; transmit power of the remote station 6; amount of data to be transmitted by the remote station 6; amount of interference for each station; priority of the remote station; and other pertinent information (See Tiedemann, Col. 9 lines 30-47). Furthermore, Tiedemann discloses that the channel scheduler 12 can temporarily assign a lower transmission rate to a remote station 6 if the FER is high, without waiting for the next scheduling period (See Tiedemann Col, 16, lines 33-43). However, to the contrary of the claimed invention that uses a combination of radio wave propagation, data size and transmission error rate for scheduling in determining the maximum transmission rate of each mobile station, Tiedemann does not disclose scheduling its rate on the reverse link by taking into account the transmission error rate. More specifically, the FER

determination alleged by the Examiner is not performed during scheduling; instead it is assigned temporarily without waiting for the next scheduling period. Consequently, the Applicant respectfully submits that Tiedemann fails to disclose determination of a maximum transmission rate for each of a plurality of mobile stations by taking account of a radio wave propagation, data size and transmission error rate determined via cyclic redundancy check (CRC), and priority order for each mobile station based on the radio wave propagation, the data size and the transmission error rate, as particularly claimed in the foregoing Claims 2, 3, 5, 8 and 10.

For the foregoing reasons, the Applicant respectfully requests the Examiner to withdraw the rejection of Claims 2, 3, 5, 8 and 10 pursuant to 35 U.S.C. § 102(e).

In sum, the Applicant believes the above-identified application is in condition for allowance and henceforth respectfully solicits such allowance. If the Examiner believes a telephone conference might expedite the allowance of the application, the Applicant respectfully request the Examiner to call the undersigned, Applicant's attorney, at the following telephone number: (516) 742-4343.

Respectfully submitted,

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